IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

STATE OF RAJASTHAN & ORS. VS. `Aayas' SHRI MANGAL NATH (D.B.Civil Special Appeal No.141/94)

Date of Judgment:- 21st July, 2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.K.L.Thakur, Additional Advocate General for the appellant-State.
Mr.D.D.Thanvi, for the respondent.

BY THE COURT: (PER HON'BLE MOHAMMAD RAFIQ,J.)

The State of Rajasthan has come up in appeal against the judgment of the learned Single Judge dated 7th December, 1992 whereby the writ petition filed by the respondent against the notice dated 15th May, 1981 and the order dated 4th July,1981 both of which were issued/passed by the Assistant Devsthan Commissioner, Udaipur were quashed.

Respondent `Aayas' Shri Mangal Nath filed a writ petition before this Court claiming himself to be `Mahant' of the Asan known as Chomukhanath Mahadev. He asserted that his predecessors were `Rajguru' of Maharanas of Mewar and the office he holds was the principal seat of `Nath Sampraday' having control over 49 `Asans' of this `Sampraday'. Former Maharana of Mewar gifted various properties to the

`Aayas' of Chaumukhanath in the form of land and houses which have successively devolved up on the disciples of the Gurus who latter occupied the office of `Aayas' . Such disciples were nominated either by Guru himself during his lifetime or in the event of there being no such nomination, were appointed according to the maufi rules prevalent in the former Mewar State. Village of Laduwas was given as maufi to the ancestors of the petitioner. As per the customs and traditions of the `sampraday', `Aayas' was the absolute owner of such properties. It was stated that petitioner's predecessor `Aayas' Shri Bhura Nath died intestate on 4.2.1958. The petitioner was appointed as permanent `Aayas' by government order dated 24.11.1965 under which a committee was also appointed to assist him in discharge of his duties. The committee was later dissolved by government order dated 22.12.1965.

The State of Rajasthan proceeded to resume the Jagir of Laduwas on 7.8.1954 . On the objection filed by the `Aayas' that the properties of this Jagir being “Sardarshan Maufi” could not be resumed, the state government while resuming such land on 1.11.1959 held that the `Asan' would be entitled to an annuity in perpetuity to the extent of Rs.8288.44 per annum which would be used for its upkeep and maintenance . The petitioner created a trust which he got registered with Devsthan Department on 15.7.1975 as a public trust. Apart from the landed property at village Laduwas, the `Aayas' had considerable properties in the shape of `Haveli' and a `Badi' at Udaipur which were gifted to his ancestors by the former Maharans of Mewar. Owner-ship of the said properties were conferred on the `Aayas' by a `Tamrapatra',

transcription of which has been placed on record as Annexure 1. Jagir Commissioner in his order dated 7.5.1964 also held that `Haveli' at Udaipur was personal property of `Aayas Mathadheesh'. This order was confirmed by the Board of Revenue by its judgment dated 22.2.1966. These judgments established that `Haveli' was personal property of `Aayas' who was its absolute owner and Devsthan Department had nothing to do with it. The appellant has placed on record copies of various documents to show that his predecessors have been selling out parcels of the land . However, some persons inimically disposed towards him made a complaint to Devsthan Department. The Assistant Devsthan Commissioner proceeded to issue notice to the appellant u/s 24 of the Rajasthan Public Trust Act. The appellant challenged the said notice by filing S.B.Civil Writ Petition No.1040/81. Another notice was served on the petitioner on 15.5.1981 to show cause as to why action may not be initiated against him for alienating the property of the temple. He filed reply to such notice reiterating his stand that he was owner of these properties. The Assistant Devsthan Commissioner however passed the impugned order on 4.7.1981 on the application of one Jaimal Singh. It was therefore prayed that the notice dated 15.5.1985 and the order dated 4.7.1981 passed by the Assistant Devsthan Commissioner, Udaipur may be quashed and set aside.

The State of Rajasthan through Assistant Devsthan Commissioner contested the aforesaid petition and filed reply. In the reply it was denied that the properties were personal properties of the `Aayas'. In fact, these properties were not gifted to the ``Aayas'' by the

former Maharanas of Mewar but they were gifted to `Chaumukhi Mahadev Temple-Thakurji'. The `Haveli' in question was donated for the purpose of rendering service and performing worship in the temple. The properties of the temple whether land or `Haveli' and building etc. were required to be utilised for upkeep and maintenance of the temple. The government asserted that disputed `Aasan' was under the control of Mewar State and therefore it was a government supardgi temple. Earlier it used to be managed by the Sat Darshan Department of the then Mewar State and after merger of the Mewar State in the Union of Rajasthan, the same was vested in the State of Rajasthan.

The respondent submitted that the appellant was appointed as `Aayas' by the State Government vide order dated 26.3.1962(Annexure R/3) passed by the Dy. Secretary to the Government in its Department of Revenue. Pursuant to such appointment, an agreement was executed between the government and the petitioner on 5.4.1962 (Annexure R/4). According to terms of appointment and agreement the appellant was precluded from selling properties of the `Asan'. It was submitted that Thakurji, namely deity, being perpetual minor, Pujari or Mahant is appointed only for the purpose of seva-puja and management of the temple. Office of `Aayas' was equivalent to that of Manager or administrator. He had to only manage and administer the properties of 'Chaumukhinath Mahadeo Temple' under which there were 49 'Asans'. When the appellant started selling out parcels of the properties, Assistant Devsthan Commissioner rightly issued notice to him and after inquiry rightly passed the impugned order on 4.7.1981. As regards the orders

passed by the Jagir Commissioner and the Board of Revenue, it has been submitted that these authorities had no jurisdiction to declare the properties of temple/deity as personal properties of `Aayas' although in fact also no such finding has been recorded by either of them. It was therefore prayed that the writ petition may be dismissed.

Learned Single Judge after hearing arguments of the parties vide his judgment dated 7th December,1992 allowed the writ petition. It is against this judgment that the present special appeal has been filed.

Mr.K.L.Thakur, learned Additional Advocate General appearing for the appellant-State has argued that `Haveli' in question was donated by former Maharanas of Mewar State to the temple for its seva-puja and up keep and maintenance. The temple in question was earlier managed and controlled by the Sat Darshan Department of erstwhile Mewar State and with the formation State of Rajasthan now, the properties of the temple came under control of the Devasthan Department. He argued that the petitioner was appointed as `Aayas' (Mahant) of temple by the government order dated 26.3.1962 (Annexure R/3) and simultaneously an agreement was also executed between the government and the petitioner on 5.4.1962 (Annexure R/4). According to condition No.12 of the order dated 26.3.1962, the petitioner was precluded from transferring any property of the temple/Aasan which condition was again reiterated in para 4 in the self same order which stated that “Shri Mangal Nath and the Committee will have no powers to transfer the immovable or movable property of the Thikana”. He also drew

our attention to clause 12 of the agreement according to which the petitioner undertook not transfer or alienate the properties of the `Aasan'.

In these circumstances when complaint was received by the Assistant Devsthan Commissioner, he in exercise of his powers u/s 24 of the Rajasthan Public Trust Act, 1959 conducted inquiry and held that `Haveli' in question was given to ancestors of the `Aayas' for upkeep and maintenance of the temple. The `Haveli' could not be considered as personal property of `Aayas' Shri Mangal Nath or any of his predecessors. He could not therefore transfer or sale `Haveli' or any part of it to anyone. The Assistant Devsthan Commissioner therefore held that the sale of the `Haveli' by the present `Aayas' or his predecessors was illegal. Learned Additional Advocate General also argued that the orders passed by the Jagir Commissioner and subsequently by the Board of Revenue were merely confined to determination of amount of compensation for resumption of the land of `Thikana Laduwas' and did not declare `Haveli' as personal property of the `Aayas' nor did they confer any title in respect of the `Haveli' on the `Aayas' . He therefore argued that the judgment passed by the learned Single Judge may be set aside and the writ petition may be dismissed.

On the other hand, Mr.D.D.Thanvi, learned counsel appearing for the respondent has argued that Jagir Commissioner in his order dated 7.5.1964 has categorically held that ``Haveli'' at Udaipur was not situated in the Jagir area of `Thikana Laduwas' and therefore could not be included in jagir property. He on the basis of this finding

argued that this property was held to be personal property of the `Aayas'. When the government challenged this order before the Board of Revenue, the Board by its order dated 22.2.1966 also held that the `Haveli' in question did not fall within the definition of Jagir land as laid down in Section 2(h) of the Rajasthan Land Reforms and Resolution of Jagir Act, 1952. On the basis of this finding of the Board of Revenue, learned counsel argued that `Haveli' in question should be taken as personal property of the `Aayas'. He placed heavy reliance on the contents of `Tamrapatra' transcription of which has been placed on record as Annexure 1 and argued that `Haveli' was given to the `Aayas' of the temple as his personal property for his use and occupation and not to the temple. The `Aayas' therefore had acquired absolute title of the property and could deal with in the manner he wanted. Learned counsel for the respondent also relied upon a Division Bench judgment of this Court in D.B.C.Special Appeal No.827/1993 titled “Aayas Shri Mangal Nath Chela of Shri Bhuranath vs. The State of Raj. & Ors.” dated 26th September,2002 and argued that in the said judgment, action initiated by the Assistant Devsthan Commissioner for altering nature of entry of the `Aasan' and its attached properties under the Rajasthan Public Trust Act, 1959 was quashed and set aside. Learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of Board of Revenue for Rajasthan, Ajmer vs. Rao Baldev Singh & Ors., reported in AIR 1968 S.C. p.898 wherein it was held that determination by Jagir Commissioner whether the land is “Khudkasht” of Jagirdar is final since he has exclusive jurisdiction to decide the said question.

We have bestowed our anxious consideration to the arguments advanced by both the learned counsels and perused the record.

Under challenge in the writ petition was the order of the Assistant Commissioner passed on 4.7.1981. The Assistant Devsthan Commissioner on consideration of contents of the `Tamrapatra' came to a definite finding that there was no mention whatsoever in it that `Haveli' would be personal property of the `Aayas'. The Assistant Devsthan Commissioner also on examination of the judgment passed by the Jagir Commissioner and that of the Board of Revenue held that these authorities have merely considered the question with regard to the determination of compensation and have not declared `Haveli' as personal property of the `Aayas'. He held that `Aayas' of `Nath Sampraday' was head of `Thikana Laduwas'. The Maharanas of Mewar State treated them as their Guru and therefore gifted them Jagirs. Since, `Aayas' had an important role to play in Navratra Puja performed by the Maharana during which he was required to stay at Udaipur, `Haveli' was gifted for his residence. The office of `Aayas' of `Chomukhinath Mahadev Temple' was a “Nihang Gaddi” and its successors were appointed earlier by the Maharana of Mewar and thereafter by the State Government. The Assistant Devsthan Commissioner also examined the terms of the appointment of the petitioner as `Aayas' as contained in his appointment order issued by the State Government dated 26.3.1962 and held that according to conditions of his appointment, he had no right to sale or otherwise alienate the properties of the temple. The Assistant Devsthan

Commissioner therefore held that the sale of the `Haveli' by the present `Aayas' or his predecessor was illegal.

We have examined the order of appointment of the petitioner as `Aayas' dated 26.3.1962(Annexure R/3) and the agreement executed between the government and the petitioner vide order dated 5.4.1962(Annexure R/4). In our view, the petitioner holds the office of `Aayas' by virtue of this order and he therefore cannot be permitted to challenge conditions of the very appointment order of which he is a creation. It appears that a reference was made by the government to the Chariman of the Board of Revenue for seeking his advise for appointment of a new `Aayas'. There were in all ten claimants. The Chairman, Board of Revenue after interviewing all the candidates considered Shri Mangal Nath of Rayla as the best of the lot, who is the respondent herein. Government accepting such recommendations appointed the respondent as `Aayas' of Thikana Laduwas. One of the conditions of his appointment was that he shall not transfer any immovable or movable property of the Thikana. In the agreement, he also undertook in clause (xii) not to alienate or transfer the property. He therefore did not have any legal authority to sell properties of the temple including `Haveli' in question. We have also examined the order passed by Jagir Commissioner and that of the Board of Revenue who merely held that the `Haveli' at Udaipur being not situated in the Jagir area of Laduwas could not be included in jagir properties and therefore no compensation on that account could be awarded . In view of the analysis of all these documents, we do not find that the Assistant Devsthan Commissioner committed any error in

passing the order dated 4.7.1981 .

The Division Bench judgment relied upon by the petitioner only held the notice issued by the Assistant Devsthan Commissioner intending to change character of the disputed trust recorded u/s 21 of the Rajasthan Public Trust Act from public trust to a government supurdagi temple as illegal. The Division Bench held that Section 24 merely authorises the Assistant Devsthan Commissioner to hold further enquiry with respect to particulars relating to public trust and to record finding and make or amend the entries in the register maintained u/s 21 of the Act but such provision does not empower him to cancel the entry. Whereas in the present case, the impugned order passed by the Assistant Devsthan Commissioner does not seek to cancel entries already made in Section 21 of the Public Trust Act but it only amplifies and clarifies them to say that `Haveli' in question being property of the public trust is not personal property of the `Aayas'. If at all the petitioner is aggrieved by this order, the only remedy available to him against such entries made u/s 21 or amendment in such entries on the basis of further enquiry u/s 24, is to file a civil suit u/s 22 of the Rajasthan Public Trust Act and rightly so because determination of such disputed questions of fact can only be made in a civil suit wherein the parties would have the opportunity to produce evidence in support of their case.

In our view, therefore the learned Single Judge was not justified in quashing and setting aside the show cause notice dated 15.5.1981 and the order passed by the Assistant Devsthan Commissioner

dated 4.7.1981.

In the result, the present special appeal is allowed and judgment passed by learned Single Judge is set aside. Consequently,the writ petition filed by the petitioner is dismissed. Dismissal of the writ petition however would not preclude the petitioner from filing civil suit as provided for by Section 22 of the Public Trust Act. In the event of any such suit being filed, the civil court will be free to take its own view on the issues involved uninfluenced by observations made in this judgment. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J. **(S.N.JHA),C.J.**

Aditya/-